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must reexamine the claim and determine whether additional review or development is warranted.

(b) *Unclear communication or disagreement.* If within one year after mailing an adverse decision (or 60 days for simultaneously contested claims), the AOJ receives a written communication expressing dissatisfaction or disagreement with the adverse decision, but the AOJ cannot clearly identify that communication as expressing an intent to appeal, or the AOJ cannot identify which denied claim(s) the claimant wants to appeal, then the AOJ will contact the claimant to request clarification of the claimant's intent. This contact may be either oral or written.

(1) For oral contacts, VA will contact whoever filed the communication. VA will make a written record of any oral clarification request conveyed to the claimant including the date of the adverse decision involved and the response. In any request for clarification, the AOJ will explain that if a response to this request is not received within the time period described in paragraph (c) of this section, the earlier, unclear communication will not be considered an NOD as to any adverse decision for which clarification was requested.

(2) For written contacts, VA will mail a letter requesting clarification to the claimant and send a copy to his or her representative and fiduciary, if any.

(c) *Response required from claimant—*

(1) *Time to respond.* The claimant must respond to the AOJ's request for clarification within the later of the following dates:

(i) 60 days after the date of the AOJ's clarification request; or

(ii) One year after the date of mailing of notice of the adverse decision being appealed (60 days for simultaneously contested claims).

(2) *Failure to respond.* If the claimant fails to provide a timely response, the previous communication from the claimant will not be considered an NOD as to any claim for which clarification was requested. The AOJ will not consider the claimant to have appealed the decision(s) on any claim(s) as to which clarification was requested and not received.

(d) *Action following clarification.* When clarification of the claimant's intent to file an NOD is obtained, the AOJ will reexamine the claim and determine whether additional review or development is warranted. If no further review or development is required, or after necessary review or development is completed, the AOJ will prepare a Statement of the Case pursuant to §19.29 unless the disagreement is resolved by a grant of the benefit(s) sought on appeal or the NOD is withdrawn by the claimant.

(e) *Representatives and fiduciaries.* For the purpose of the requirements in paragraphs (b) through (d) of this section, references to the "claimant" include reference to the claimant or his or her representative, if any, or to his or her fiduciary, if any, as appropriate.

(Authority: 38 U.S.C. 501, 7105, 7105A)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0674)

[71 FR 56871, Sept. 28, 2006]

§ 19.27 Adequacy of Notice of Disagreement questioned within the agency of original jurisdiction.

If, after following the procedures set forth in 38 CFR 19.26, there remains within the agency of original jurisdiction a conflict of opinion or a question pertaining to a claim regarding whether a written communication expresses an intent to appeal or as to which denied claims a claimant wants to appeal, the procedures for an administrative appeal, as set forth in 38 CFR 19.50–19.53, must be followed.

(Authority: 38 U.S.C. 501, 7105, 7106)

[71 FR 56872, Sept. 28, 2006]

§ 19.28 Determination that a Notice of Disagreement is inadequate protested by claimant or representative.

Whether a Notice of Disagreement is adequate is an appealable issue. If the claimant or his or her representative protests an adverse determination made by the agency of original jurisdiction with respect to the adequacy of a Notice of Disagreement, the claimant

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will be furnished a Statement of the Case.

(Authority: 38 U.S.C. 7105)

§ 19.29 Statement of the Case.

The Statement of the Case must be complete enough to allow the appellant to present written and/or oral arguments before the Board of Veterans' Appeals. It must contain:

(a) A summary of the evidence in the case relating to the issue or issues with which the appellant or representative has expressed disagreement;

(b) A summary of the applicable laws and regulations, with appropriate citations, and a discussion of how such laws and regulations affect the determination; and

(c) The determination of the agency of original jurisdiction on each issue and the reasons for each such determination with respect to which disagreement has been expressed.

(Authority: 38 U.S.C. 7105(d)(1))

§ 19.30 Furnishing the Statement of the Case and instructions for filing a Substantive Appeal.

(a) *To whom the Statement of the Case is furnished.* The Statement of the Case will be forwarded to the appellant at the latest address of record and a separate copy provided to his or her representative (if any).

(b) *Information furnished with the Statement of the Case.* With the Statement of the Case, the appellant and the representative will be furnished information on the right to file, and time limit for filing, a Substantive Appeal; information on hearing and representation rights; and a VA Form 9, "Appeal to Board of Veterans' Appeals."

(Authority: 38 U.S.C. 7105)

[57 FR 4104, Feb. 3, 1992, as amended at 61 FR 20449, May 7, 1996]

§ 19.31 Supplemental statement of the case.

(a) *Purpose and limitations.* A "Supplemental Statement of the Case," so identified, is a document prepared by the agency of original jurisdiction to inform the appellant of any material changes in, or additions to, the information included in the Statement of the Case or any prior Supplemental

Statement of the Case. In no case will a Supplemental Statement of the Case be used to announce decisions by the agency of original jurisdiction on issues not previously addressed in the Statement of the Case, or to respond to a notice of disagreement on newly appealed issues that were not addressed in the Statement of the Case. The agency of original jurisdiction will respond to notices of disagreement on newly appealed issues not addressed in the Statement of the Case using the procedures in §§ 19.29 and 19.30 of this part (relating to statements of the case).

(b) *When furnished.* The agency of original jurisdiction will furnish the appellant and his or her representative, if any, a Supplemental Statement of the Case if:

(1) The agency of original jurisdiction receives additional pertinent evidence after a Statement of the Case or the most recent Supplemental Statement of the Case has been issued and before the appeal is certified to the Board of Veterans' Appeals and the appellate record is transferred to the Board;

(2) A material defect in the Statement of the Case or a prior Supplemental statement of the Case is discovered; or

(3) For any other reason the Statement of the Case or a prior Supplemental Statement of the Case is inadequate.

(c) *Pursuant to remand from the Board.* The agency of original jurisdiction will issue a Supplemental Statement of the Case if, pursuant to a remand by the Board, it develops the evidence or cures a procedural defect, unless:

(1) The only purpose of the remand is to assemble records previously considered by the agency of original jurisdiction and properly discussed in a prior Statement of the Case or Supplemental Statement of the Case; or

(2) The Board specifies in the remand that a Supplemental Statement of the Case is not required.

(d) *Exception.* Paragraph (b)(1) of this section does not apply in proceedings before the General Counsel conducted under part 14 of this chapter to cancel